

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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GABE BEAUPERTHUY, <u>et al.</u> on behalf)	No. 06-0715 SC
of themselves and all others)	
similarly situated,)	
)	<u>OPT-IN ORDER</u>
Plaintiffs,)	
)	
v.)	
)	
)	
24 HOUR FITNESS USA, INC., a)	
California corporation d/b/a 24)	
Hour Fitness; SPORT AND FITNESS)	
CLUBS OF AMERICA, INC., a)	
California corporation d/b/a 24)	
Hour Fitness,)	
)	
)	
Defendants.)	
)	

WHEREAS, Plaintiffs Gabe Beauperthuy, et al., filed a motion to facilitate notice under Section 16(b) of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §216(b), and Defendant 24 Hour Fitness USA, Inc., et al., (hereinafter "24 Hour Fitness") opposed Plaintiffs' motion;

WHEREAS, pursuant to this Court's Order of March 6, 2007 Granting In Part And Denying In Part Plaintiffs' Motion For

Facilitated Notice Pursuant To 29 U.S.C. §216(b) entered in the above-captioned matter ("Conditional Certification Order"),

IT IS HEREBY ORDERED AS FOLLOWS:

1. Plaintiffs' FLSA claims in this case shall proceed as a conditional collective action under Section 16(b) of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §216(b), on behalf of all persons who work or have worked for 24 Hour Fitness in any state in the United States, except California, during the time period between December 31, 1998 and the present ("Claims Period"), in any managerial position classified by 24 Hour Fitness as exempt from overtime requirements.

2. The FLSA Notice and Consent to Join forms (attached hereto as Exhibit "A") are approved.

3. CPT Group, Inc. ("Notice Administrator") is approved as the Notice Administrator for the FLSA Notice pursuant to 29 U.S.C. §216(b). Plaintiffs shall bear the cost of notice, including but not limited to fees charged by the Notice Administrator and copying and mailing fees.

4. Within sixty (60) days of the date of this ORDER, 24 Hour Fitness shall produce to plaintiffs' counsel and the Notice Administrator a machine-readable list of all the names and addresses of all persons described in paragraph 1 of this ORDER, so that notice may be timely accomplished. 24 Hour Fitness shall further produce to the Notice Administrator within ten (10) days of any request by the Administrator all social security numbers ("SSN") for any person described in paragraph 1 of this ORDER whose FLSA Notice is returned by the Post Office. The SSNs shall

only be provided to the Notice Administrator who shall maintain them in strict confidentiality, in a password protected database. The Notice Administrator shall implement physical, technical and administrative safeguards for the SSNs, including, but not necessarily limited to, those which restrict access to the SSNs to employees of the Notice Administrator with a need to know. The Notice Administrator may not disclose the SSNs to plaintiffs' counsel or any other third party. Use of the SSNs shall be limited to performing skip tracing methods to locate the current address of the person to whom notice should be given. Use and possession of the list of name and address information provided by 24 Hour Fitness pursuant to this paragraph shall be solely limited to Plaintiffs' counsel and the Notice Administrator. The Notice Administrator shall use the information solely for the purpose of providing notice of this action to persons entitled to file Consent to Join forms pursuant to paragraph 1 of this ORDER. Plaintiffs' counsel shall not copy the list or any of the names and addresses on the list and shall maintain the confidentiality of the names and addresses. Plaintiffs' counsel shall return the list of names and addresses to 24 Hour Fitness on or before ten (10) days after the expiration of the opt-in period. Plaintiffs' counsel shall use the name and address data only for the following purposes: to confirm with the Notice Administrator and Defendants' counsel that the Notice Administrator sends notices to the individuals on the list; and to send a copy of the FLSA Notice to prospective class members upon their request.

5. The Notice Administrator shall mail the proposed FLSA

1 Notice and Consent to Join Form to all persons described in
2 paragraph 1 of this ORDER as soon as practicable and in no event
3 later than thirty (30) days after receiving the mailing list
4 described in paragraph 4 of this ORDER, or a longer period of time
5 if the parties so stipulate.

6 6. As soon as practicable and in any event no later than 20
7 days prior to the close of the opt-in period, the Notice
8 Administrator shall give notice (and supplemented notices as
9 necessary) to all counsel the names of putative class members
10 whose FLSA notices are returned by the Post Office as
11 undeliverable, who cannot be located through the National Change
12 Of Address (NCOA) database or skip tracing methods. Within
13 fourteen (14) days of such notice, 24 Hour Fitness shall provide a
14 copy of the Notice and Consent to Join Forms to each such
15 individual on the list who is a current 24 Hour Fitness employee
16 at that time. 24 Hour Fitness shall not transmit any
17 communication to the persons described in paragraph 1 that
18 undermines the FLSA notice or attempts to discourage participation
19 in the collective action.

20 7. Each "Consent to Join" form must be postmarked or faxed
21 to the Notice Administrator no later than sixty (60) days after
22 the date that the Notice Administrator mails the notice. Within
23 ten (10) days of the close of the opt-in period described above,
24 all Consent to Join forms shall be filed with the Court.
25 Individuals for whom Consent to Join forms are not filed within
26 such time shall not participate in this lawsuit.

27 8. After 24 Hour Fitness has produced to plaintiffs'
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1 counsel and the Notice Administrator the machine-readable list of
2 all the names and addresses of all persons described in paragraph
3 1 of this ORDER, the parties shall meet and confer and 24 Hour
4 Fitness shall describe the method it used to choose which persons
5 were to be included and plaintiffs shall assert any objections
6 plaintiffs have to the process used by 24 Hour Fitness. If the
7 parties are unable to resolve any issues, either party may request
8 leave to file a motion with the Court. If such leave is granted,
9 the time for the Notice to be mailed set forth in paragraph 5
10 shall be tolled until the dispute that is the subject of the
11 motion is resolved.

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13 IT IS SO ORDERED.

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15 Dated: May 9, 2007.

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18 UNITED STATES DISTRICT JUDGE
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United States District Court
For the Northern District of California

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EXHIBIT A

NOTICE OF COLLECTIVE ACTION

**THIS IS NOT A LAWSUIT AGAINST YOU. PLEASE READ THIS NOTICE
CAREFULLY. YOUR LEGAL RIGHTS MAY BE AFFECTED.**

TO: All persons who have worked for 24 Hour Fitness in any state in the United States, except California, during the time period between December 31, 1998 and the present ("Claims Period"), in any managerial position classified by 24 Hour Fitness as exempt from overtime requirements.

RE: Fair Labor Standards Act ("FLSA") Lawsuit Filed Against 24 Hour Fitness

1. INTRODUCTION

The purpose of this Notice is to inform you of the existence of a collective action lawsuit in which you potentially are "similarly situated" to the named plaintiffs, to advise you of how your rights may be affected by this lawsuit, and to instruct you on the procedure for participating in this lawsuit if you so desire.

As described more fully below, if you are eligible and wish to participate in this collective action, you must timely complete and submit the "Consent to Join" form attached to this Notice.

2. DESCRIPTION OF THE LAWSUIT

On February 1, 2006, the named plaintiffs filed a Complaint in the U.S. District Court for the Northern District of California against 24 Hour Fitness on behalf of themselves and certain groups of past and present employees of 24 Hour Fitness in states *other*

1 than California. Plaintiffs allege that 24 Hour Fitness failed to
2 pay them and past and present employees in managerial positions who
3 were classified as exempt from overtime requirements by 24 Hour
4 Fitness, the wages and overtime pay to which they were entitled
5 under the federal Fair Labor Standards Act ("FLSA"). Plaintiffs
6 allege they are entitled to unpaid wages and overtime for such work
7 performed after December 31, 1998.

8 Plaintiffs also seek liquidated damages and attorneys' fees and
9 costs.

10 24 Hour Fitness denies any and all liability, including
11 Plaintiffs' allegations that it failed to correctly compensate
12 employees or that it is liable to Plaintiffs for violations of the
13 FLSA.

14 **3. THE CURRENT STATE OF THIS LAWSUIT**

15 This lawsuit is in the very early stages of litigation. The
16 Court has conditionally certified this case as a collective action
17 and ordered this Notice be sent to you.

18 If you do join, you may be required to participate in the
19 discovery process. You may be required to answer written questions,
20 under oath, concerning the overtime hours you claim, if any, that
21 you worked which were not compensated. You may also be required to
22 answer questions, under oath, in an oral deposition and/or give
23 testimony at a trial and travel to do so.

24 **4. PERSONS ELIGIBLE TO RECEIVE THIS NOTICE**

25 The U.S. District Court has ordered this FLSA Notice to be
26 distributed to all persons who currently work or have worked for 24
27 Hour Fitness, in any state, except California, between December 31,
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1 1998 and the present, in any managerial position classified by 24
2 Hour Fitness as exempt from overtime requirements.

3 **5. YOUR RIGHT TO PARTICIPATE IN THIS LAWSUIT**

4 If you were employed by 24 Hour Fitness for any period between
5 December 31, 1998 and the present in a managerial position that 24
6 Hour Fitness treated as exempt from overtime, and you believe that
7 24 Hour Fitness has failed to pay you for all hours worked or for
8 all overtime compensation to which you are entitled, you have the
9 right to join the pending FLSA lawsuit against 24 Hour Fitness.

10 If you want to participate in this lawsuit, you must take
11 affirmative steps to indicate your intent to join the action. You
12 must complete, sign and fax or mail a copy of the "Consent to Join"
13 form, which is attached to this Notice, to CPT Group, Inc., who is
14 the court-appointed Notice Administrator. If mailed, your signed
15 "Consent to Join" form must be postmarked no later than *[insert date*
16 *60 days after the mailing date]*.

17 If faxed, your signed "Consent To Join" form must be
18 successfully faxed no later than *[insert date 60 days after the*
19 *mailing date]*.

20 If your "Consent to Join" form is not postmarked by that date,
21 or not successfully faxed to the Notice Administrator (CPT Group) by
22 that date, you will not be allowed to participate in this lawsuit.

23 Having a "Consent to Join" form filed does not guarantee that
24 you will be able to participate in the trial of this lawsuit as this
25 may depend upon a final ruling from the District Court that you and
26 the named Plaintiffs are "similarly situated" under federal law.
27 Failing to return and have filed a "Consent to Join" form postmarked
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1 on or before the deadline means that you cannot participate in any
2 settlement or judgment for damages under the FLSA as part of this
3 lawsuit.

4 **6. STATUTE OF LIMITATIONS**

5 Normally, the FLSA contains a limitations period of at least
6 two years and potentially up to three years for the filing of a
7 claim for unpaid overtime wages, after which the claim is forever
8 barred. However, in this case the Court has tolled the statute of
9 limitations to allow all Plaintiffs to sue for conduct which
10 occurred any time after December 31, 1998. In the event that you
11 decide not to file a Consent to Join in this lawsuit, you should
12 consult with your own attorney as to the statute of limitations
13 which would apply to your claim.

14 **7. EFFECT OF JOINING THIS SUIT**

15 If you file a "Consent to Join" form and the Court later
16 permits your claims to proceed to trial as part of the collective
17 action, you will be bound by any judgment regarding the FLSA claims
18 in the lawsuit, whether favorable or unfavorable to Plaintiffs.
19 While the suit is proceeding, you may be required to provide
20 relevant information, and may be required to give sworn testimony
21 in a deposition or in Court and travel to do so.

22 If you choose to join this collective action, you will be
23 represented by the law firm currently representing the Plaintiffs.
24 If you join the suit, you will not be required to pay attorney's
25 fees or expenses in advance. Class counsel may be paid either by
26 the Defendant, or they may, either in addition to or instead of
27 payment from Defendant, receive a percentage of any money judgment

1 or settlement in favor of you, or others similarly situated, as
2 agreed by contract and/or ordered by the Court.

3 As an alternative to joining this lawsuit, you may file your
4 own lawsuit with any counsel of your choosing, or do nothing.

5 If you return a Consent to Join form, you should be aware that
6 important decisions concerning the prosecution of this case
7 including for the FLSA claims may be made on your behalf.

8 **8. NO LEGAL EFFECT IN NOT JOINING THIS LAWSUIT**

9 If you choose not to join this collective action, you will not
10 be affected by any judgment, whether it is favorable or unfavorable
11 to Plaintiffs and the collective class. If you choose not to file
12 a Consent to Join form, you are free to file your own lawsuit. If
13 you choose not to file a Consent to Join form, the statute of
14 limitations will continue to run until such time as you file a
15 lawsuit on your own behalf.

16 **9. NO RETALIATION PERMITTED**

17 FEDERAL LAW PROHIBITS 24 HOUR FITNESS OR ITS AGENTS FROM TAKING
18 ANY ACTION AGAINST YOU BECAUSE YOU ELECT TO JOIN THIS ACTION BY
19 FILLING OUT AND RETURNING THE "CONSENT TO JOIN" FORM, OR OTHERWISE
20 EXERCISING YOUR RIGHTS UNDER THE FLSA.

21 **10. ADMINISTRATOR**

22 CPT Group, Inc.
23 16630 Aston
24 Irvine, California 92606
Facsimile: 949-852-9340
Telephone: 888-687-3491

25 **11. PLAINTIFFS' COLLECTIVE ACTION COUNSEL**

26 Thomas G. Foley, Jr. State Bar No. 065812
27 Philip D. Dracht, State Bar No. 219044
28 **FOLEY BEZEK BEHLE & CURTIS, LLP**
15 West Carrillo Street

Santa Barbara, California 93101
Telephone (805) 962-9495
Fax: (805) 965-0722
tfoley@foleybezek.com; pdracht@foleybezek.com

Richard E. Donahoo, State Bar No. 186957
Thomas J. Welch, State Bar No. 242065
DONAHOO & ASSOCIATES
505 North Tustin Avenue, Suite 160
Santa Ana, California 92705
Telephone (714) 953-1010
Fax: (714) 953-1777
rdonahoo@donahooandassoc.com

12. DEFENDANTS' LEGAL REPRESENTATION

Henry D. Lederman
Lisa C. Chagala
LITTLER MENDELSON, P.C.
2175 North California Blvd., Ste. 835
Walnut Creek, CA 94596
(925) 932.2468
hlederman@littler.com

13. FURTHER INFORMATION

For further information about this lawsuit, including any part of this notice, please contact Plaintiffs' counsel at the following toll-free number: 1-800-549-1789 or email. PLEASE DO NOT CONTACT THE COURT OR ANY COURT PERSONNEL FOR INFORMATION.

THIS NOTICE AND ITS CONTENTS HAVE BEEN AUTHORIZED BY THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA. THE COURT HAS TAKEN NO POSITION IN THIS CASE REGARDING THE MERITS OF PLAINTIFFS' CLAIMS OR DEFENDANTS' DEFENSES.

IT IS SO ORDERED.

Dated: May 9, 2007.



UNITED STATES DISTRICT JUDGE

FILING INFORMATION

1. INSTRUCTIONS FOR FILING CONSENT TO JOIN FORMS

If you choose to join this FLSA collective action, your "Consent to Join" form must be completed, signed and returned. Your "Consent to Join" form must be postmarked or fax-dated no later than *[insert date 60 days after the mailing date]*.

CHANGE OF ADDRESS

If you send a "Consent to Join" form to the Notice Administrator and then move or change your address, please advise Plaintiffs' counsel:

Thomas G. Foley, Jr. State Bar No. 065812
Philip D. Dracht, State Bar No. 219044
FOLEY BEZEK BEHLE & CURTIS, LLP
15 West Carrillo Street
Santa Barbara, California 93101
Telephone (805) 962-9495
Fax: (805) 965-0722
tfoley@foleybezek.com; pdracht@foleybezek.com

Richard E. Donahoo, State Bar No. 186957
DONAHOO & ASSOCIATES
505 North Tustin Avenue, Suite 160
Santa Ana, California 92705
Telephone (714) 953-1010
Fax: (714) 953-1777
rdonahoo@donahooandassoc.com

2. FURTHER INFORMATION

To obtain further information about this lawsuit, including your right to join, please contact Plaintiffs' counsel at the address or phone number listed directly above.

CONSENT TO JOIN LAWSUIT AS A PARTY PLAINTIFF

Beauperthuy, et al. v. 24 Hour Fitness, et al., United States District Court for the Northern District of California. Case Number C-06-00715 SC.

I understand that this lawsuit is being brought under the federal Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, et seq. I consent, agree, and opt-in to become a party plaintiff to this lawsuit. I agree to be bound by any adjudication or settlement of this action by the Court, whether it is favorable or unfavorable, and agree to designate the class representatives as my agents, and I understand that I will be bound by the decisions and agreements made by an entered into by said representatives. I hereby designate the law firms of Foley, Bezek, Behle & Curtis, LLP and Donahoo & Associates, to represent me in this action.

I am a current or former employee of 24 Hour Fitness, and I worked in the following position(s) at 24 Hour Fitness:

<u>Position</u>	<u>Club Location</u>	<u>Dates Employed (Month/Year)</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

Dated: _____ Signature: _____

Name (Printed): _____ Telephone: _____

Address: _____

Email address: _____

This form must be returned by mail POSTMARKED (or successfully faxed) NO LATER THAN [insert date] to:

CPT Group, Inc.
16630 Aston
Irvine, California 92606
Facsimile: 949-852-9340